

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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TIERRA LLOYD.

**Plaintiff,**

V.

KERING GROUP, et al.,

## Defendants.

Case No. 2:24-cv-02209-APG-BNW

## **REPORT AND RECOMMENDATION**

10 On November 25, 2024, Plaintiff filed her complaint. ECF No. 1. On February 25, 2025,  
11 the Court issued its Notice of Intent to Dismiss because no proofs of service had been filed for  
12 Defendants and gave Plaintiff until March 27, 2025 to file said proofs. ECF No. 10. On the date  
13 of the deadline, Plaintiff filed a declaration from her counsel explaining that the parties agreed to  
14 submit to arbitration. ECF No. 11. The declaration indicated, however, that the parties disagreed  
15 on whether (1) the Court should retain jurisdiction of the case during arbitration or (2) Plaintiff  
16 should dismiss the case. *Id.* The Court explained that it could not maintain the action unless  
17 Defendants were served (or waived service) and gave Plaintiff until April 28, 2025 to file the  
18 proofs of service. ECF No. 12. To date, no proofs have been filed and Defendants have not  
19 otherwise appeared. As a result, the Court recommends that Plaintiff's case be dismissed without  
20 prejudice.

The law permits a district court to dismiss an action based on a party’s failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public’s interest in expeditious resolution of litigation, (2) the court’s need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less-draastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d

1 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.  
2 1987)).

3 The first two factors, the public’s interest in expeditiously resolving this litigation and the  
4 Court’s interest in managing its docket, weigh in favor of dismissal of Plaintiff’s claims. The third  
5 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of  
6 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
7 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
8 factor—the public policy favoring disposition of cases on their merits—weighs against dismissal.

9 The fifth factor requires the Court to consider whether less-drastic alternatives can be used  
10 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts  
11 “need not exhaust every sanction short of dismissal before finally dismissing a case but must  
12 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th  
13 Cir. 1986). Because this action cannot proceed without Defendants being served, the only  
14 alternative is to enter another order setting another deadline. The circumstances here do not  
15 indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a  
16 meaningful alternative. So, the fifth factor favors dismissal.

17 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*  
18 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four  
19 factors support dismissal or where at least three factors “strongly” support dismissal).

20 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED without**  
21 **prejudice** for failure to comply with the Court’s service deadline.

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23 **NOTICE**

24 This report and recommendation is submitted to the United States district judge assigned  
25 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
26 may file a written objection supported by points and authorities within fourteen days of being  
27 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely  
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1 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,  
2 1157 (9th Cir. 1991).

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4 DATED: April 30, 2025

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BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE

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